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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No.: USCBP-2019-0012]

Receipt of Domestic Interested Party Petition Concerning the Tariff Classification of Steel Special Profiles for the Manufacture of Forklift Truck Masts and Carriages

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: U.S. Customs and Border Protection (CBP) has received a petition submitted on behalf of a domestic interested party requesting the reclassification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain steel special profiles from the United Kingdom and Germany, imported for use in manufacturing forklift masts or carriages. In New York Ruling Letter (NY) N293371, dated February 8, 2018, CBP classified the steel special profiles under subheading 8431.20.00, HTSUS, as parts suitable for use solely or principally with forklifts. Petitioner contends that based on their condition as imported and the processing that needs to be undertaken after importation, the steel special profiles should be classified under subheading 7216.50.00, HTSUS, as hot-rolled nonalloy steel profile shapes. Petitioner further contends that the result of this ruling is that the products are avoiding the application of additional duties for steel imposed by Presidential Proclamation 9705 of March 8, 2018, under Section 232. This document invites comments with regard to the correctness of the current classification.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2019-0012.
- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K St., NE, 10th Floor, Washington, DC 20229-1177.

Instructions: All submissions received must include the agency name and docket number for this notice of domestic interested party petition concerning the tariff classification of certain steel special profiles. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents, exhibits, or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m., at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, NE, 10th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark, Trade and Commercial Regulations Branch, at (202) 325-0118. Please note that any submitted comments that CBP receives by mail will be posted on the above-referenced docket for the public's convenience.

FOR FURTHER INFORMATION CONTACT: Alben Peters, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, at (202) 325-0321.

SUPPLEMENTARY INFORMATION:

Background

A petition has been filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), on behalf of Steel of West Virginia, Inc. (Petitioner), which manufactures steel shapes or profiles for sale to forklift truck manufacturers and is located in Huntington, West Virginia. Petitioner meets all of the requirements of a domestic interested party set forth in 19 U.S.C. 1516(a)(2) and section 175.3(a) in Title 19 of the Code of Federal Regulations (19 CFR 175.3(a)).

Petitioner is requesting that U.S. Customs and Border Protection (CBP) reclassify the merchandise, referred to as “incomplete steel mast rails and finger bars,” in NY N293371, dated February 8, 2018. Petitioner contends that the merchandise is merely steel special profile shapes classifiable under subheading 7216.50.00 of the Harmonized Tariff Schedule of the United States (HTSUS).

In NY N293371, CBP described the merchandise as “either (1) cut to a fixed length in accordance with customer instructions or (2) in lengths designed to fit within the transporting cargo container ... in their condition as imported, the mast rails and finger bars are not ready for direct use in fork-lifts.” CBP applied General Rule of Interpretation (GRI) 2(a) to classify the subject merchandise as a blank for a part of a forklift in subheading 8431.20.00, as “Parts suitable for use solely or principally with the machinery of headings 8425 to 8430: Of machinery of heading 8427.”

Petitioner maintains that use of GRI 2(a) is inappropriate because the merchandise meets the definition of an angle shape or section in Note 1(n) to Chapter 72. Moreover, Petitioner contends that the profiles must undergo extensive manufacturing after importation to make them suitable for use in the mast or carriage of a forklift. As such, according to Petitioner, the profiles do not have the essential character of forklift truck parts and are not excluded from classification by Note 1(f) to Section XV, pursuant to which articles of section XVI, HTSUS (machinery, mechanical appliances and electrical goods), are not covered by section XV, HTSUS.

Applicable Legal Principles

Classification under the HTSUS is made in accordance with the GRIs. GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may be applied, in numerical order.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding on the contracting parties and, therefore, not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system. CBP's position is that the ENs should always be consulted. See Treasury Decision (T.D.) 89-80, 54 FR 35127, 35128 (Aug. 23, 1989).

Elaboration of the Petitioner's Views

Petitioner contends that the proper classification for the steel special profiles is subheading 7216.50.00, HTSUS, which covers “Angles, shapes and sections of iron or nonalloy steel: Other angles, shapes and sections, not further worked than hot-rolled, hot-drawn or extruded,” in accordance with Note 1(n) to Chapter 72, HTSUS which defines steel “angles, shapes and sections” as “products having a uniform solid cross section along their whole length which do not conform to any of the definitions at (i), (j), (k), (l) or (m) above or to the definition of wire.” Petitioner argues that Note 1(f) to Section XV is inapplicable because the merchandise is not ready for use as forklift parts, or even for assembly into the mast or carriage part of a forklift, in its condition as imported.

Petitioner contends that the steel special profile parts, even when referred to as “incomplete mast rails and finger bars,” require many additional steps until they are ready for assembly into a mast or carriage, such as:

- Cutting to length from 20-35 feet to fit into a shipping container down to approximately 7 feet for masts and 3 feet for carriages.
- Shot blasting and straightening to prepare for welding and painting.
- Machining and/or torch cutting to remove portions of the flange and to notch the pieces in the appropriate places.
- Drilling multiple holes in accordance with its use and placement in the carriage or mast.
- Welding to modify the profile section depending on its ultimate position in the carriage or mast.
- Cleaning and painting for final installation in the carriage or mast.

Petitioner contends that these manufacturing processes significantly alter the steel profiles after importation to create the component assembled into a mast or carriage. Given the amount of extra processing required for steel profile shapes, even when referred to as “incomplete mast rails and finger bars,” Petitioner maintains that the imported merchandise does not have the essential character of a forklift part and cannot be classified as such.

In support of its argument, Petitioner cites to GRI 2(a), which states: “Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the finished article.” Additionally, EN 2(a) defines the term “blanks” as “an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into the finished article or part. Semi-manufactures not yet having the essential shape of the finished articles (such as is generally the case with bars, discs, tubes, etc.) are not regarded as ‘blanks.’”

Petitioner argues that steel special profiles do not have the “essential character” of forklift truck parts as they are specified in their own heading, require extensive further manufacturing after importation, the post-importation manufacturing significantly alters the original shape and outline, each profile may be cut into different shapes, and the products are recognized and sold in the industry as steel profiles.

Analysis Used by CBP in Prior Rulings

Historically, as noted by Petitioner, CBP has classified special steel profiles in heading 7216, HTSUS. In NY J82683, dated April 18, 2003; NY N295670, dated April

27, 2018; and NY N295858, dated May 3, 2018, CBP classified hot extruded nonalloy steel profiles in C, G, J and S shapes, which had yet to be machined, assembled into a frame and painted after importation, in heading 7216, HTSUS. By contrast, in NY N293371, where CBP referred to the merchandise as “incomplete mast rails and fingerbars,” CBP did find the steel special profiles to be classified in heading 8431, HTSUS, as parts of forklifts, by application of GRI 2(a). Whether the merchandise at issue and subject to NY N293371 should be reclassified under heading 7216, HTSUS, consistent with the other cited rulings (NY J82683, NY N295670 and NY N295858), hinges on the substantiality of the operations performed after importation.

Section 232 Duties

The current column one, general rate of duty for products classified in either subheading discussed above is Free. However, on March 8, 2018, Presidential Proclamation 9705 (83 FR 11625) imposed additional tariffs and quotas on a number of steel products. Exemptions have been made on a temporary basis for some countries. Quantitative limitations or quotas may apply for certain exempted countries and can also be found in Chapter 99. Additional duties for steel of 25 percent are reflected in Chapter 99, subheading 9903.80.01. Steel products of the United Kingdom and Germany of heading 7216.50.00, HTSUS, are currently subject to additional duties for steel of 25 percent under Subchapter III, Chapter 99, U.S. Note 16(b). Importers of such products must also identify subheading 9903.80.01, HTSUS, at entry. Products of the United Kingdom and Germany of subheading 8431.20.00, HTSUS, are currently not subject to Section 232 duties.

Comments

Pursuant to section 175.21, CBP Regulations (19 CFR 175.21), before making a determination on this matter, CBP invites written comments on the petition from interested parties.

The domestic interested party petition concerning the tariff classification of certain steel special profiles, as well as all comments received in response to this notice, will be available for public inspection on the docket at www.regulations.gov. Please note that any submitted comments that CBP receives by mail will be posted on the above-referenced docket for the public's convenience.

Authority

This notice is published in accordance with 19 U.S.C. 1516 and section 175.21 of the CBP Regulations (19 CFR 175.21).

Dated: March 29, 2019.

Robert E. Perez,

Deputy Commissioner,

U.S. Customs and Border Protection.

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